

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CITIBANK, N.A, AS TRUSTEE, )  
)  
Plaintiff, )  
)  
v. )  
)  
JOHN P. PHELAN, WENDY M. PHELAN, )  
THE UNITED STATES OF AMERICA, )  
O'CALLIGHAN CONSTRUCTION )  
COMPANY, AND THE )  
COMMONWEALTH OF )  
MASSACHUSETTS DEPARTMENT OF )  
REVENUE, )  
)  
Defendants, and )  
)  
DAVID LA BRIE, )  
)  
Defendant and Cross-claimant )

Civil Action No. 4:05-CV-40045-FDS

**NOTICE OF SERVICE OF EXHS. A AND B TO ANSWER AND CROSS-CLAIMS OF  
DEFENDANT AND CROSS-CLAIMAINT DAVID LA BRIE  
UPON THE UNITED STATES OF AMERICA AND  
NOTICE OF PRIOR SERVICE OF SAME ON ALL OTHER PARTIES**

Defendant and cross-claimant David La Brie hereby electronically serves (as a separately filed documents identified as Exhs. A and B linked to this to this paper) on the United States of America documents that were Exhs. A and B to his Answer and Cross-Claims, the pleading constituting the answer and cross-claims with its exhibits having been originally filed with the Worcester Superior Court by mailing on February 8, 2005, and on that day having been served on all parties by a true and accurate complete copy being sent by first-class mail to each party or

the party's attorney (as attested to in Ex. B), with two exceptions, namely that true and accurate complete copies were served on defendants Wendy M. Phelan and John P. Phelan by mailing a copy on February 11, 2005, and with the further exception that the copy sent to the United States of America was mailed solely to the Internal Revenue Service rather than additionally to the government's counsel, that error being partly rectified by electronic service of the answer and cross-claims on May 16, 2005, and now being fully rectified by additional service of the exhibits to the answer and cross-claims *instantly*.

Date: May 30, 2005

Respectfully submitted,

/S/ William M. Palmer

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William M. Palmer, Esq.  
BBO # 563 978  
50 Congress Street, Ste 500  
Boston, Massachusetts 02109  
Tel.: (617) 524-7490  
Fax.: (617) 523-5194

ATTORNEY FOR DEFENDANT AND  
CROSS-CLAIMANT DAVID LA BRIE

#### CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this document and exhibits A-B to the answer were served by first class mail on this 30<sup>th</sup> day of May on David M. Rosen, Esq.; Harmon Law Offices, P.C.; 150 California Street; Newton, MA; 02458, and on John J. Curley, Esq.; McEvilly & Curley; 48 West Street; Leominster, MA; 01453.

/S/ William M. Palmer

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WILLIAM M. PALMER

May 30, 2005

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DATED

## **EXHIBIT "A"**

TO DAV D LA BRES  
ANSWER & CROSS CLAIMS

Uniform Form DMC-15

**The Commonwealth of Massachusetts**  
**Massachusetts Trial Court**  
**District Court Department**

CENTRAL WORCESTER DIVISION

WORCESTER, SS.

**DAVE LA BRIE**  
 PLAINTIFF

V.

**JOHN P. PHELAN & WENDY M. PHELAN**  
 D/O/A JP FLOORING PLUS  
 DEFENDANTS

Civil Action No. 0462 CV 323

**WRIT OF ATTACHMENT**  
 (Rule 4.1)

A TRUE COPY ATTEST

DEPUTY SHERIFF

To the Sheriffs of our several counties or their deputies, or a constable of any City or Town within the Commonwealth:

We command you to attach the goods or estate of defendant JOHN P. PHELAN AND WENDY M. PHELAN, of WINCHENDON, WORCESTER COUNTY, MA, to the value of \$ 12,000, the amount authorized, as prayed for by plaintiff DAVE LA BRIE of LEOMINSTER, WORCESTER CITY, MA whose attorney is PETER M. MIRAGGAS of MARLBORO, MA in an action brought by said plaintiff against said defendant in this court, and make due return of this writ with your doings there on.

The complaint in this case was filed on FEB 20, 2004. This attachment was approved on 2-22-04 by [Signature], J., in the amount of \$ 12,000.

WITNESS, LoConto, Paul, Presiding Justice, Worcester,

(date)

Thomas J. Noonan  
 THOMAS J. NOONAN CLERK

## PROOF OF ATTACHMENT



**Worcester County Sheriff's Office** • P.O. Box 1066 • Worcester, MA 01613 • (508) 752-1100  
 Worcester, ss

By virtue of this writ, I this day at 11:56am attached as the property of the within named Defendants JOHN P. PHELAN and WENDY M. PHELAN all their right, title and interest in and to any real estate in WINCHENDON or elsewhere in the County of Worcester. The above is a true copy so much of my return as relates to the attachment of real estate.

ATTEST:

Deputy Sheriff Melissa A Waqq



Form 15 CMF

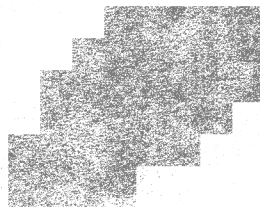
Bk: 32882 Pg: 335 Doc: ATT


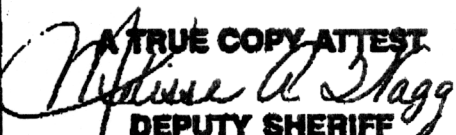

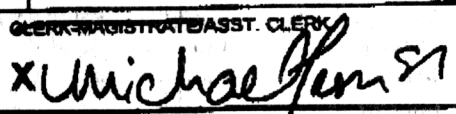
[Signature]  
 Deputy Sheriff

ATTEST: WORC. Anthony J. Viglotti, Register



## **EXHIBIT "B"**



EXECUTION		DOCKET NUMBER <b>200462CV000323</b>	Court of Massachusetts District Court Department	
CASE NAME <b>DAVE LA BRIE vs. JOHN P. PHELAN D/B/A J P FLOORING PLUS</b>				
JUDGMENT CREDITOR(S) IN WHOSE FAVOR EXECUTION IS ISSUED P01 DAVE LA BRIE			CURRENT COURT Worcester District Court 50 Harvard Street Worcester, MA 01608-1198 (508) 757-8350	
JUDGMENT CREDITOR (OR CREDITOR'S ATTORNEY) WHO MUST ARRANGE SERVICE OF EXECUTION P01 PETER M. MIRAGEAS LAW OFCS OF PETER M MIRAGEAS 27 PROSPECT STREET MARLBORO, MA 01752			<b>A TRUE COPY ATTEST</b>  <b>DEPUTY SHERIFF</b>	
JUDGMENT DEBTOR AGAINST WHOM EXECUTION IS ISSUED D01 JOHN P. PHELAN D/B/A J P FLOORING PLUS  WINCHENDON, MA 01475				
 2004 00100738 Bk: 33801 Pg: 77 Doc: EXO Page: 1 of 4 08/04/2004 03:38 PM				
<b>TO THE SHERIFFS OF THE SEVERAL COUNTIES OR THEIR DEPUTIES, OR (SUBJECT TO THE LIMITATIONS OF G.L. c. 41 § 92) ANY CONSTABLE OF ANY CITY OR TOWN WITHIN THE COMMONWEALTH:</b>  The judgment creditor(s) named above has recovered judgment against the judgment debtor named above in the amount shown below.  <b>WE COMMAND YOU</b> , therefore, from out of the value of any real or personal property of such judgment debtor found within your territorial jurisdiction, to cause payment to be made to the judgment creditor(s) in the amount of the "Execution Total" shown below, plus additional postjudgment interest as provided by G.L. c. 235 § 8 on the "Judgment Total" shown below commencing from the "Date Execution Issued" shown below at the "Annual Postjudgment Interest Rate" shown below, and to collect your own fees, as provided by law. This Writ of Execution is valid for twenty years from the "Date Judgment Entered" shown below. It must be returned to the court, along with your return of service, within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undischarged.				
1. Judgment Total		\$12,857.05		
2. Date Judgment Entered		05/14/2004		
3. Date Execution Issued		05/26/2004		
4. Number of Days from Judgment to Execution (Line 3 - Line 2)		12		
5. Annual Postjudgment Interest Rate of 12.00% / 365 = Daily Interest Rate		0.032877%		
6. Postjudgment Interest from Judgment to Execution (Lines 1x4x5)		\$50.72		
7. Postjudgment Costs (if any)		\$0.00		
8. Credits (if any)		\$0.00		
<b>9. EXECUTION TOTAL (Lines 1 + 6 + 7, minus Line 8)</b>		<b>\$12,907.77</b>		
LEVYING OFFICER: (a) Add daily interest from date execution issued.				
(b) Add your fees as provided by law:				
TESTE OF FIRST JUSTICE  WITNESS: Hon. Paul F. LoConto		DATE EXECUTION ISSUED  05/26/2004		CLERK/MAGISTRATE/ASST. CLERK  



June 4, 2004

Worcester, SS. Worcester

By virtue of an Execution which issued on a Judgment in favor of

**David La Brie**

against **John P. Phelan d/b/a J P Flooring Plus,**

**812 West Short Drive, Ashburnham MA**

which was rendered on **May 14, 2004** said Execution having been placed in my hands for the purpose of taking lands of said Judgment Debtor, I have this day levied on and taken all right, title and interest which the said Judgment Debtor had not exempt by law from attachment or levy on Execution on **February 23, 2004**, the date when same was attached on mesne process or which he now have in and to a certain parcel of land in said **Winchendon** bounded and described as follows:

(see attached for legal description)

The above is a true copy of so much of my return as related to Levy of Real Estate. And I suspend further action at this time on written request of the Plaintiff's attorney.

Mail to:

**David N. DiTommaso, Esquire**  
**Law Offices of Peter M. Mirageas**  
**27 Prospect Street**  
**Marlborough MA 01752**

ATTEST:

*Melissa A. Wagg*  
**Melissa A. Wagg**

**Deputy Sheriff**



**PARCEL 11**

A certain parcel of land on the easterly side of West Shore Drive in the Town of Winchendon, Worcester County, Massachusetts, being shown as Lot #813 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:

BEGINNING at a point on said plan where Lot #813 meets Lot #812 and West Shore Drive, and running in a northeasterly direction in a straight line for a distance of sixty (60) feet to a point on said plan; **THENCE** running in the same general direction as shown on said plan for a further distance of fifty (50) feet. **THENCE** turning and running in a southeasterly direction for a distance of one hundred forty-five and 70/100 (145.70) feet to a point on said plan. **THENCE**, running in the same direction one (1) foot, more or less, to a point along the water. **THENCE**, turning and running along the water in a southwesterly direction a distance of eighty (80) feet, more or less, to a point along the water. **THENCE**, turning and running in a northwesterly direction a distance of seven (7) feet, more or less, to a point on said plan. **THENCE**, running in the same direction a further distance of one hundred sixty-four and 85/100 (164.85) feet to the point of beginning.

Containing 15,000 square feet, more or less.

The granted premises are conveyed subject to easements, restrictions, and conditions and agreements of record as amended.

Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 219.

**PARCEL 11**

A certain parcel of land on the easterly side of West Shore Drive in the Town of Winchendon, Worcester County, Mass., being shown as Lot #814 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:

BEGINNING at a point on said plan where Lot #814 meets Lot #813 along West Shore Drive and running in a northeasterly direction for a distance of seventy-six (76) feet. **THENCE**, running in the same

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direction along a curved line having a radius of one hundred fifty (150) feet for a distance of thirty-eight (38) feet. **THENCE**, turning and running in a southeasterly direction a distance of one hundred sixty-six and 33/100 (166.33) feet to a point on said plan. **THENCE**, running in the same direction two (2) feet, more or less, to a point along the water. **THENCE**, turning and running along the water in a southwesterly direction, eighty-five (85) feet, more or less, to a point along the water. **THENCE**, turning and running in a northwesterly direction a distance of one (1) foot, more or less, to a point on said plan. **THENCE**, running in the same direction, a distance of one hundred forty-five and 70/100 (145.70) feet to the point of beginning.

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Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 223.

**PARCEL 31**

A certain parcel of land on the Easterly side of West Shore Drive in the Town of Winchendon, Mass., Worcester County, being shown as Lot #812 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:

**BEGINNING** at a point where Lot #812 meets Lot #813 and West Shore Drive and running on a straight line in a southeasterly direction for a distance of one hundred sixty-four and 85/100 (164.85) feet to a point on said plan. **THENCE**, running in the same direction seven (7) feet, more or less, to a point along the water. **THENCE**, running along the water in a westerly direction for a distance of seventy-five (75) feet, more or less, as shown on said plan. **THENCE**, running northwesterly for a distance of one (1) foot, more or less, to a point on said plan. **THENCE**, running in the same direction and a further distance of one hundred eighty-seven and 54/100 (187.54) feet to a point along West shore Drive. **THENCE**, running northeasterly for a distance of one hundred (100) feet to the point of beginning.




Containing 16,000 square feet, more or less.

The granted premises are conveyed subject to easements, restrictions, and conditions and agreements of record as amended.

Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 215.

**ATTEST: WORC. Anthony J. Vigliotti, Register**



<b>EXECUTION</b>	DOCKET NUMBER <b>200462CV000323</b>	Superior Court of Massachusetts District Court Department
CASE NAME <b>DAVE LA BRIE vs. JOHN P. PHELAN D/B/A J P FLOORING PLUS</b>		
JUDGMENT CREDITOR(S) IN WHOSE FAVOR EXECUTION IS ISSUED <b>P01 DAVE LA BRIE</b>	CURRENT COURT Worcester District Court 50 Harvard Street Worcester, MA 01608-1198 (508) 757-8350	
JUDGMENT CREDITOR (OR CREDITOR'S ATTORNEY) WHO MUST ARRANGE SERVICE OF EXECUTION <b>P01 PETER M. MIRAGEAS          LAW OFCS OF PETER M MIRAGEAS          27 PROSPECT STREET          MARLBORO, MA 01752</b>	FURTHER ORDERS OF THE COURT  <div style="text-align: right;"> <b>A TRUE COPY ATTEST</b>    <b>DEPUTY SHERIFF</b> </div>	
JUDGMENT DEBTOR AGAINST WHOM EXECUTION IS ISSUED <b>D02 WENDY M. PHELAN D/B/A J P FLOORING PLUS          812 WEST SHORE DR.          WINCHENDON, MA 01475</b>	<div style="text-align: center;">   <b>2004 06100738</b>          Bk: 33801 Pg: 81 Doc: EXC          Page: 1 of 4 05/04/2004 08:38 PM       </div>	
<p><b>TO THE SHERIFFS OF THE SEVERAL COUNTIES OR THEIR DEPUTIES, OR (SUBJECT TO THE LIMITATIONS OF G.L. c. 41 § 92) ANY CONSTABLE OF ANY CITY OR TOWN WITHIN THE COMMONWEALTH:</b></p> <p>The judgment creditor(s) named above has recovered judgment against the judgment debtor named above in the amount shown below.</p> <p><b>WE COMMAND YOU</b>, therefore, from out of the value of any real or personal property of such judgment debtor found within your territorial jurisdiction, to cause payment to be made to the judgment creditor(s) in the amount of the "Execution Total" shown below, plus additional postjudgment interest as provided by G.L. c. 235 § 8 on the "Judgment Total" shown below commencing from the "Date Execution Issued" shown below at the "Annual Postjudgment Interest Rate" shown below, and to collect your own fees, as provided by law. This Writ of Execution is valid for twenty years from the "Date Judgment Entered" shown below. It must be returned to the court, along with your return of service, within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undischarged.</p>		
1. Judgment Total		\$12,857.05
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3. Date Execution Issued		05/26/2004
4. Number of Days from Judgment to Execution (Line 3 - Line 2)		12
5. Annual Postjudgment Interest Rate of 12.00% / 365 = Daily Interest Rate		0.032877%
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LEVYING OFFICER: (a) Add daily interest from date execution issued.		
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TESTE OF FIRST JUSTICE	DATE EXECUTION ISSUED	CLERK/MAGISTRATE/ASST. CLERK
WITNESS: Hon. Paul F. LeConte	05/26/2004	

June 4, 2005

Worcester, SS. Worcester

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**Dave La Brie**

against **Wendy M. Phelan d/b/a J P Flooring Plus,**

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**27 Prospect Street**  
**Marlborough MA 01752**

ATTEST

  
**Melissa A. Wagg**

**Deputy Sheriff**



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----- WOOD ATTEST: William Danister